C. S. 100L (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 2730 /2004

PETITIONER : Guharam Dhuruve, Sarpanch,
Gram Panchayat Jewadankala,
District- Kabirdham (C.G.)

VERSUS

RESPONDENTS : 1. Director, Panchayat,
Chhattisgarh, Raipur (C.G.)

2. Collector Kabirdham.
District Kabirdham (C.G.)

3. C.E.O. Janpad Panchayat,
Kabirdham.,
District- Kabirdham (C.G.)

4. Secretary, Gram Panchayat,
Jewadankala,
District Kabirdham.

P. R. No. 2-6-04
Presented by Shri D.K. Tiwari
dated 20-3-04

C.D. COPY
2/8/04
Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2730/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	6.9.-09.2004 Shri Dinesh Tiwari, counsel for the petitioner. w/- present- Shri N.K. Agrawal, Deputy Advocate General for the State. w/present- The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India being aggrieved by the order-dated 09.08.2004 passed by the Director, Panchayat, Chhattisgarh, Raipur in Appeal No.212-B/121/03-04 (Annexure P-5) whereby the Director, Panchayat stayed the implementation and execution of the order dated 04.06.2004 passed by the Collector, Kabirdham whereby Monohar Singh Marawi, Sarpanch of the Gram Panchayat, Jewadankala, was declared disqualified on account of begetting two children after 26.01.2001 in violation of Section 36 (1)(m) read with sub-section (2) of the Panchayat Raj Adhiniyam, 1993 and pursuant to the direction of the Director, Panchayat, the Chief Executive Officer, Janpad Panchayat vide order dated 13.08.2004 directed the Secretary, Gram Panchayat, Jewadankala, to give charge of Sarpanch to Manohar Singh Marawi after taking charge from the petitioner herein. I have heard learned counsel for the parties on the question of admission. Brief facts leading to filing of this writ petition are that in the general election of Panchayat Manohar Singh Marawi was elected as Sarpanch of Gram Panchayat Jewadankala, however, after 26.01.2001	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

two live children were born to said Manohar Singh Marawi, as such a complaint was lodged against him in the office of Collector. After conducting enquiry, the Collector, Kabirdham passed the order dated 04.6.2004 declaring Manohar Singh Marawi disqualified to continue as Sarpanch of Gram Panchayat, Jewadankala under sub-section (2) Section 36 of the Act of 1993. Thereafter, to fill up that casual vacancy the Panchas of Gram Panchayat, Jewadankala elected the petitioner herein as Sarpanch amongst themselves. However, against the order of the Collector said Manohar Singh Marawi preferred an appeal before the Director, Panchayat, who vide order dated 09.08.2004 stayed the implementation and operation of the order dated 04.06.2004 passed by the Collector, Kabirdham. In pursuance to the order of the Director, Panchayat, the Chief Executive Officer, Janpad Panchayat, Kabirdham vide letter dated 13.8.2004 directed the Secretary, Gram Panchayat, Jewadankala for handing over the charge of Sarpanch to said Manohar Singh Marawi after taking charge from the petitioner herein.

The case of the petitioner is that since the Panchas of Gram Panchayat, Jewadankala elected him as Sarpanch on account of the vacancy occurred due to disqualification of Manohar Singh Marawi, therefore, now he cannot be removed from that post.

It is an admitted fact that the petitioner herein was initially elected as Panch of Gram Panchayat, Jewadankala, however, after

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incurring disqualification to continue as Sarpanch by Manohar Singh Marawi, the post of Sarpanch, Gram Panchayat Jewadankala fell vacant, therefore, the petitioner was elected against that casual vacancy of the Sarpanch. But that disqualification order was stayed by the Director, Panchayat under sub-section (4) of Section 36 of Adhiniyam of 1993. Sub-section (4) envisages that "*any person aggrieved by the decision of the Collector is entitle to prefer an appeal within a period of 30 days from the date of such decision before the Director, Panchayat, whose order in such appeal shall be final*".

As Manohar Singh Marawi had preferred an appeal and order dated 4.6.2004 has already been stayed by the Director, Panchayat and the appeal is in continuation of the proceedings initiated by the Collector, therefore, Manohar Singh Marwai is entitle to continue as Sarpanch till the appeal is decided and stay is continuing. As, the petitioner herein was elected Sarpanch amongst the Panchas on account of the casual vacancy arose because of the orders of the Collector, which is under challenge before the Director of Panchayat, who has already stayed the implementation and operation of the order of the Collector, therefore, Manohar Singh Marawi, who is regular Sarpanch of Gram Panchayat, Jewadankala, is entitled to continue as Sarpanch. This petition of the petitioner is misconceived; he has no right to continue as Sarpanch of Gram Panchayat, Jewadankala, as the ground on which the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

casual vacancy arose has become non-existent on account of the stay order passed by the Director, Panchayat.

In view of the above, I do not find any force in this petition, same is liable to be dismissed and accordingly, it is dismissed at the admission stage.

Sd/-
L.C.BHADOO
Judge

Roshani